

IT 06-17

Tax Type: Income Tax

Issue: Non-Filers (Income Tax)

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

JOHN DOE,

Taxpayer

No. 00-IT-0000
SSN: 000-00-0000
Tax Year 2001
John E. White
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: *John Doe* appeared *pro se* for taxpayers; Rickey Walton, Special Assistant Attorney General, appeared for the Illinois Department of Revenue.

Synopsis: This matter involves *John Doe*'s (taxpayer[']s) protest of a Notice of Deficiency (NOD) the Illinois Department of Revenue (Department) issued to him regarding tax year ending December 31, 2001. The Department issued the NOD after it determined that taxpayer had not filed an Illinois income tax return for that year, and that he was required to have done so.

The issues at hearing were whether taxpayer filed a return for 2001, and if not, whether penalties proposed pursuant to § 3-3 of the Uniform Penalty and Interest Act (UPIA), should be abated for reasonable cause. After considering the evidence offered at hearing, I recommend that the issues be resolved in the Department's favor.

Findings of Fact:

1. *Doe* was an Illinois resident during 2001. Department Ex. 1 (NOD).
2. The Department did not receive an Illinois individual income tax return from taxpayer regarding tax year 2001. Department Ex. 1.

3. The Department issued an NOD to taxpayer. Department Ex. 1.
4. The NOD notified taxpayer that, after receiving information from the Internal Revenue Service, the Department had determined that taxpayer had been required to file an Illinois return for 2001. Department Ex. 1, p. 3. (Form IL-870, Waiver of Restrictions). The NOD proposed to assess Illinois income tax in the amount of \$1,430, and a penalty in the amount of \$874. *Id.*
5. After taxpayer protested the NOD, he tendered to the Department copies of books and records sufficient for the Department to revise the amount of Illinois income tax proposed in the NOD. Department Ex. 2, p. 1 (memo from Technical Review notifying Department counsel of revised tax calculations).
6. Taxpayer's revised proposed liability is based on the following determinations: taxpayer's adjusted gross income (AGI) was \$53,667; taxpayer was entitled to 3 exemptions, for \$6,000; and taxpayer's net income was \$47,667. Department Ex. 2, p. 3 (copy of schedule EDA-24, auditor's report).
7. The Department further took into account that taxpayer had had Illinois income tax in the amount of \$961 withheld from his wages during 2001, and that he was entitled to an Illinois credit in the amount of \$80 for property tax paid regarding his residence. Department Ex. 2, pp. 1-3.
8. Based on those determinations, the Department revised taxpayer's Illinois income tax liability to a tax due of \$389, penalty in the amount of \$516, plus interest that would accrue pursuant to statute. Department Ex. 2, p. 1.

Conclusions of Law:

When the Department introduced the NOD it issued to taxpayer into evidence, it presented prima facie proof that *Doe* was liable for the tax and penalties proposed. 35 ILCS 735/3-3(f); 35 ILCS 5/904(a). The Department's prima facie case is a rebuttable

presumption. Branson v. Department of Revenue, 68 Ill. 2d 247, 261, 659 N.E.2d 961, 968 (1995). A taxpayer cannot overcome the presumption merely by denying the accuracy of the Department's assessment, or merely by denying knowledge of a tax deficiency. Branson, 68 Ill. 2d at 267, 659 N.E.2d at 971; A.R. Barnes & Co. v. Department of Revenue, 173 Ill. App. 3d 826, 833, 527 N.E.2d 1048, 1053 (1st Dist. 1988). Instead, a taxpayer is obliged to present documentary evidence that is consistent, probable and closely identified with its books and records, to show that the proposed assessment is not correct. Fillichio v. Department of Revenue, 15 Ill. 2d 327, 333, 155 N.E.2d 3, 7 (1958); PPG Industries, Inc. v. Department of Revenue, 328 Ill. App. 3d 16, 33-34, 765 N.E.2d 34, 48-49 (1st Dist. 2002).

The first issue is whether taxpayer filed an Illinois return for 2001. Taxpayer testified that he was pretty sure that he did file a return for 2001, but that he had no proof of mailing. Hearing transcript (Tr.), pp. 11-12. He further testified that, when it was time to file the return, he did not include payment of the amount required to be shown due, because he had no money at that time. *Id.*, pp. 8-10. Since he offered no documentary evidence to corroborate his testimony, I conclude that it is not sufficient to rebut the prima facie correctness of the Department's determination that taxpayer did not file a return for 2001, and that he was required to have done so. Department Ex. 1; 35 ILCS 5/904; Balla v. Department of Revenue, 96 Ill. App. 3d 293, 296-97, 421 N.E.2d 236, 239 (1st Dist. 1981) (uncontroverted testimony that was not corroborated with documentary evidence was insufficient to show that taxpayer was entitled to claimed exemption).

The second issue is whether the penalties should be abated. The Department has promulgated a regulation in which it defined reasonable cause and described how it would administer the UPIA. 86 Ill. Admin. Code § 700.400. That regulation provides, "... whether a taxpayer acted with reasonable cause shall be made on a case by case basis

taking into account all pertinent facts and circumstances. The most important factor to be considered in making a determination to abate a penalty will be the extent to which the taxpayer made a good faith effort to determine his proper tax liability and to file and pay his proper liability in a timely fashion.” 86 Ill. Admin. Code § 700.400(b); *see also* PPG Industries, Inc., 328 Ill. App. 3d at 22-23, 765 N.E.2d at 40. The regulation further provides that, “[a] taxpayer will be considered to have made a good faith effort to determine and file and pay his proper tax liability if he exercised ordinary business care and prudence in doing so. A determination of whether a taxpayer exercised ordinary business care and prudence is dependent upon the clarity of the law or its interpretation and the taxpayer’s experience, knowledge, and education. ***” 86 Ill. Admin. Code § 700.400(c).

Here, taxpayer testified that he believed that he filed a return on time, but that he knew that, if he filed it, it was filed without any accompanying payment of the amount that taxpayer conceded was due. Tr. p. 10. Thus, the evidence is clear that taxpayer had not made a good faith effort to file and pay his proper liability timely. 86 Ill. Admin. Code § 700.400(b). While *Doe* also testified that he had never previously filed an Illinois return late, that assertion does not excuse taxpayer’s admitted actions here. Tr. pp. 10-11. Taxpayer offered no competent evidence that is sufficient to show that reasonable cause existed to abate any penalty proposed in this matter.

Conclusion:

I recommend that the Director revise the NOD to be consistent with the Department’s revisions, and that he finalize that NOD as so revised, pursuant to statute.

Date: 10/23/2006

John E. White
Administrative Law Judge